

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. WILLIAMS, KIMBERLY J. HIRSCH,
PETER G. KOPPERMAN, MARTIN T. SCHULZ, DAVID N. VOTH,
MICHAEL W. KOCH, RICHARD N. PLOTNICK, and PETER A. SIMON

Appeal No. 2006-2147
Application No. 09/593,106
Technology Center 3600

Decided: March 27, 2007

Before TERRY J. OWENS, STUART S. LEVY, ANTON W. FETTING,
Administrative Patent Judges.

TERRY J. OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The appellants appeal from a rejection of claims 1, 2, 4-8, 10-14, 16, 23, 25, 26, 28, 29, 31-33, 35-39, 41 and 53-58, which are all of the pending claims.

THE INVENTION

The appellants claim a system and method for online mortgage loan qualification and application. Claim 1 is illustrative:

1. An on-line mortgage loan application and qualification method, comprising the steps of:
 - receiving loan application data for a mortgage loan, the loan application data including financial information concerning a borrower and specifying a loan principal;
 - identifying a plurality of approved mortgage products based on the loan application data, the plurality of approved mortgage products being identified using an automated underwriting engine that generates underwriting recommendations based at least in part on preselected underwriting guidelines of a secondary mortgage market purchaser;
 - calculating a customized interest rate based on the financial information for each of the plurality of approved mortgage products; and
 - providing information regarding approval status and the customized interest rate for presentation to the borrower for each of the plurality of approved mortgage products for borrower comparison and selection of one of the plurality of approved mortgage products.

THE REFERENCES

Dykstra	US 6,029,149	Feb. 22, 2000
Walker	US 6,088,686	Jul. 11, 2000 (filed Dec. 3, 1996)

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54 over Walker, and claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 over Walker in view of Dykstra.

OPINION

We affirm the aforementioned rejections.

Rejection over Walker

Walker discloses “a system and method for performing automated, real-time, online review of credit and liability applications” (col. 1, ll. 11-13). The applications can be mortgage applications (fig. 4B). Walker processes a new or existing customer relationship into the credit decision, thereby providing the customer with an up-front conditional approval based on systematic evaluation of credit bureau history, credit score, debt burden, credit policies and the customer’s relationship with the financial institution, subject to required verifications (col. 6, ll. 7-15). The system and method include relationship pricing by tier which “provides a new or existing customer requesting credit with the least expensive loan rate based upon the customer’s total relationship (i.e., deposit balances) with the financial institution” (col. 3, ll. 39-42). Regarding relationship pricing by tier, Walker discloses (col. 9, ll. 33-41):

Via on-line real-time integration of the many systems (block 52) involved in the process, all of the existing customer’s accounts are systematically and automatically reviewed during the application session to determine the aggregate balance amount, which gives rise to the best price being offered to the existing customer 10 for the requested credit product. Price includes the handling of both fixed interest rate and variable rate (e.g., indexed rates, such as prime rate plus margin) priced loan types.

The appellants argue that Walker does not identify a plurality of mortgage products for borrower comparison and selection (Br. 9-10; Reply Br. 2-3 and 6-8). Walker’s disclosure that the determination of the best price includes handling both fixed interest rate and variable rate loan types (col. 9, ll. 39-41) would have fairly suggested, to one of ordinary skill in the art, presenting the customer with the best price for each type of loan product so the customer can choose the loan product best suited for the customer. The disclosure that the loan product can be a

mortgage product (fig. 4B) would have fairly suggested, to one of ordinary skill in the art, mortgage products as Walker's fixed interest rate and variable rate loan products.

The appellants argue that Walker does not disclose that the mortgage products are approved, i.e., are identified using an automated underwriting engine that generates underwriting recommendations based at least in part on preselected underwriting guidelines of a secondary mortgage purchaser (Br. 10-11; Reply Br. 3-4). The monthly income, credit bureau history, credit score and debt burden considered by Walker (col. 6, ll. 10-15; col. 8, ll. 28-34) are guidelines used by mortgage underwriters in approving mortgage products for borrowers.

The appellants argue that their mortgage products are approved when they are presented to the borrower for comparison and selection, whereas Walker requires further online credit processing for a final decision (Reply Br. 4-5). Walker provides conditional approval based upon underwriting guidelines such as credit bureau history, credit score and debt burden, subject to required verification (col. 6, ll. 10-15). Similarly, the appellants' claimed system and method provide a likelihood of approval for a mortgage loan, subject to final approval after an online loan application process (specification, pages 12-13). Final loan approval clearly cannot be provided by the appellants' claimed system and method in cases where the applicant is anonymous (specification, page 12). Thus, the patentable distinction argued by the appellants does not exist.

The appellants argue that Walker's interest rate is not customized (Reply Br. 5-6). Walker's relationship pricing by tier customizes the interest rate by providing the customer with the appropriate interest rate tier based upon the consumer's aggregate balance amount (col. 9, ll. 33-46).

For the above reasons we are not convinced of reversible error in the examiner's rejection over Walker.

Rejection over Walker in view of Dykstra

Dykstra discloses "an apparatus and method for automatically evaluating the credit of a potential borrower and processing the potential borrower's loan application" (col. 1, ll. 24-26). The portion of Dykstra relied upon by the examiner is (Answer 5): "From there, the potential borrower can take his or her copy of the verification of the loan approval to the lender, sign the papers, and obtain the loan money..." (col. 7, ll. 47-50).

The appellants argue that Dykstra stops at loan approval and does not suggest receiving an interest rate lock from the borrower (Br. 12-14; Reply Br. 8-10). Dykstra's disclosure of a borrower accepting a loan (col. 7, ll. 47-50) would have fairly suggested, to one of ordinary skill in the art, accepting a loan with a standard lock such as 30 days. The acceptance of the loan necessarily would lock the rate for that period.

We therefore are not convinced of reversible error in the rejection over Walker in view of Dykstra.

Other Matter

In the event of further prosecution the examiner and the appellants should consider, regarding the appellants' "customized interest" limitation, the disclosure in the July 12, 1998 e-mail published in a digest by Ron Rothenberg: "There are now lenders who again do true risk-based lending, and if your history is superb, they may lend at a lower rate."¹

DECISION

¹ 5 Rothenberg, Subject: Mortgage Loan, Personal Finance Digest 3 (July 15, 1998), at <http://www.xmission.com/pub/lists/persfin/archive/v05.n033>.

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The rejections under 35 U.S.C. § 103 of claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54 over Walker, and claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 over Walker in view of Dykstra, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JRG

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FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5306